A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.21 of 2003

Ram Prasad Agrawal

versus

Rammanohar Soni

JUDGMENT

Post for 30 - 8 -2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.21 of 2003

Appellant Defendant — Ram Prasad Agrawal, S/o Late Motilal Agrawal, Aged about 65 years, R/o Ganj Line, Rajnandgaon, Tahsil & Distt. Rajnandgaon (CG)

versus

Respondent Plaintiff — Rammanohar Soni, S/o Chaituram Soni, Aged about 47 years, R/o Manav Mandir Chowk, Rajnandgaon, Distt. Rajnandgaon

Second Appeal under Section 100 of the Code of Civil Procedure

Present : Shri Anoop Majumdar, counsel for the appellant.
Shri P.K.C.Tiwari, Senior Advocate with Shri Rakesh Thakur, counsel for the respondent.

JUDGMENT

(Delivered on this 30th day of August, 2007)

This is the defendant/tenant's second appeal.

(2) The respondent/plaintiff had instituted a suit for eviction of the appellant/defendant on grounds under Section 12(1)(b)(c)(d) and (m) of the Chhattisgarh Accommodation Control Act, 1961 (henceforth 'the Act, 1961').

(3) Vide judgment and decree dated 06-07-2000 passed by Ist Civil Judge Class-I, Rajnandgaon in Civil Suit No.9-A/1998 the suit was decreed on all the aforesaid grounds.

(4) The appellant/defendant preferred first appeal. Ist Additional District Judge, Rajnandgaon, vide judgment and decree dated 11-12-2002 in Civil Appeal No.15-A/2000, affirmed the findings recorded by the trial Court relating to grounds for eviction under Section 12(1)(b) and (c) of the Act, 1961 while reversing the trial Court's judgment and decree for eviction under Section 12(1)(d) and (m) of the Act, 1961.

(5) It is not in dispute that the appellant/defendant is a tenant in the suit accommodation situated at Manav Mandir Chowk, Rajnandgaon, which is shown in red colour in Schedule A to the plaint. The appellant/defendant was inducted as a tenant in the suit accommodation by Chaituram, father of the respondent/plaintiff.

(6) The respondent/plaintiff had pleaded that in the year 1979, the appellant/defendant had sub-let the chabutara and open land in front of the suit accommodation to one Moti Halwai for doing the business of sweets. It was also pleaded by an amendment incorporated subsequently in the year 1995 that the appellant/defendant had sub-let the suit accommodation for purposes of business and was not in occupation of the suit accommodation. As regards the ground under Section 12(1)(c) of the Act, 1961 is concerned, the respondent/plaintiff relied on the pleadings of the appellant/defendant in para 2 of the written statement, which is as under :

> "2. ..... वाद ग्रस्त मकान का अकेला वादी स्वामी नहीं है, प्रतिवादी के मकान मालिक श्री रामआसरे, वादी और स्वर्गीय चैतुराम की पत्नि व उसकी चार पुत्रीयां प्रतिवादी के गृह स्वामी है । वादी ने अपने नाम से वाद लाया है और उपर बताये गये गृह स्वामीयों को इस बाद में

पक्षकार नहीं बनाया गया है । वादी को अकेले अपने नाम से वाद लाने का कोई अधिकार नहीं है और आवश्यक पक्षकार राम आसरे, चैतुराम की विधवा एवं चैतुराम की चार पुत्रीयों को इस बाद में पक्षकार नहीं बनाया गया है इसलिये यह वाद इसी विनाय पर अपास्त किया जाना चाहिये । ....."

(7) The appellant/defendant denied the plaint allegations in toto. In his testimony, the appellant/defendant did not deny that the respondent/plaintiff was not the landlord. It was stated that his son Manoj Kumar was running a shop "Agrawal Stationery and Books" in the suit premises jointly with him.

(8) The lower appellate Court, while affirming the judgment and decree under Section 12(1)(b) of the Act, 1961 passed by the trial Court, stated in para 11 of the judgment as under:

"सर्वप्रथम अधिनियम, 1961 की धारा 12(1)(बी) के आधार पर पारित निष्कासन की डिक्री पर विचार करते है । आलोच्य निर्णय की कंडिका–26 लगायत 31 में किए गए साक्ष्य विश्लेषण एवं निष्कर्ष से यह अदालत सहमत है । अतः साक्ष्य का पुनः विश्लेषण कर निष्कर्ष का कारण पुनः बताए जाने की आवश्यकता नहीं है (कृपया देखें – गिरजानंदिनी विरूद्ध विजेन्द्र नारायण (ए.आई.आर. 1967 सुप्रीम कोर्ट 1124) एवं बाबूलाल विरूद्ध धरमा (1983 एम.पी.वीकली नोट 60) । इस प्रकार धारा 12(1)(बी) में वर्णित आधार पर निष्कासन की डिक्री पारित किया जाना विधि एवं तथ्यों के अनुकूल होना निष्कर्षित किया जाता है ।"

(9) In the above scenario, this appeal raises the following two substantial questions of law:

"(A) Whether the First Appellate Court erred in not appreciating the evidence on record relating to the ground of eviction of the tenant under Section 12(1)(b) of the Act and thereby fell into error while affirming the finding recorded by the trial Court under Section 12(1)(b) of the Act without application of mind to the evidence led by the parties?

(B) Whether the pleading of the appellant/defendant that besides the plaintiff other members of his family were joint-owners of the suit house and thus necessary parties in the suit would amount to denial of title of the landlord by the tenant so as to provide the ground under Section 12(1)(c) of the Act?"

(10) Shri Anoop Majumdar, learned counsel for the appellant/defendant placed reliance on ***Ramlal and another*** **vs.** ***Phagua and others*****, 2005 AIR SCW 6348** while arguing that the lower appellate Court being the final Court of fact ought not to have mechanically affirmed the findings of the trial Court on the ground of eviction under Section 12(1)(b) of the Act, 1961. It was, therefore, argued that in second appeal, the High Court should re-appreciate the evidence and record its own conclusion. Placing reliance on ***Madhukar and others*** **vs.** ***Sangram and others*****, 2001 AIR SCW 1804**, it was argued that first appeal being a valuable right, it was the duty of the lower appellate Court to deal with all issues and evidence led by the parties before recording any finding. Since the lower appellate Court, without assigning any reasons, simply recorded an agreement with the finding recorded by the trial Court, the impugned judgment was liable to

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be set aside. It was also contended that since the respondent/plaintiff had not given any intimation to the appellant/defendant about having received the suit accommodation on a partition effected by Chaituram, the appellant/defendant had raised a question that other co-owners were necessary parties, which did not in any manner tantamount to dis-owning the character and nature of possession over the suit premises as a tenant. Placing reliance on ***Sheela and others*** **vs.** ***Firm Prahlad Rai Prem Prakash*** (supra), it was urged that the judgment and decree passed by both the Courts below under Section 12(1)(c) of the Act, 1961 was liable to be set aside.

(11) On the other hand, Shri P.K.C.Tiwari, learned Senior Advocate for the respondent/plaintiff argued in support of the impugned judgment. Learned Senior Advocate for the respondent/plaintiff, while placing reliance on ***Girijanandini Devi and others*** **vs.** ***Bijendra Narain Choudhary*****, AIR 1967 SC 1124,** contended that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial Court. Expression of general agreement with reasons given by the Court, decision of which is under appeal would ordinarily suffice.

(12) It was also submitted that for constituting a ground under Section 12(1)(b) of the Act, 1961, it is not necessary that sub-letting should continue on the date of the suit. It was proved that the appellant/defendant had sub-let a part of the premises to Moti Halwai for conducting sweets business at some point of time, which, by itself, constitutes a ground for eviction of the tenant under Section 12(1)(b) of

the Act, 1961. Reliance was also placed on ***Gajanan Dattatraya* vs. *Sherbanu Hosang Patel and others*, AIR 1975 SC 2156**. Placing reliance on ***Fida Husain* vs. *Abdul Gaffor*, 1979 (2) All India Rent Control Journal 449**, it was submitted that disclaimer of title of a co-owner by the tenant by pleading sole ownership in another co-owner constitutes a ground for eviction under Section 12(1)(c) of the Act, 1961. Placing reliance on ***Babu Lal S/o Gopilal Jain* vs. *Bilasi Bai W/o Seetaram Trivedi, and another*, 1998 MPACJ 151**, it was submitted that there is overwhelming evidence, oral as well as documentary, to show that the tenant had parted with possession of the tenanted accommodation in favour of his son, which constituted valid ground for eviction of tenant under Section 12(1)(c) of the Act, 1961. Reliance was also placed on ***Gajra Bevel Gears Ltd. (M/s.)* vs. *Manohar and others*, 1997 (2) JLJ 127**.

(13) So far as the first substantial question of law is concerned, a perusal of para 11 of the impugned judgment shows that the lower appellate Court has expressed complete agreement with the appreciation of evidence in paragraphs 26 to 31 by the trial Court and the findings recorded on the ground for eviction under Section 12(1)(b) of the Act, 1961. Paragraphs 24 to 32 of the judgment of the trial Court are as under:

> "24. <u>वादप्रश्न कमांक–6 पर निष्कर्ष</u> :–
>
> प्रतिवादी की ओर से इस वादप्रश्न के संबंध में यह तर्क दिया गया है कि उप–भाड़ेदार का नामवादपत्र में लिखाया नहीं गया है और अभिवचन भी नहीं है । यह तर्क मान्य योग्य नहीं है, क्योंकि वादी ने वादपत्र में उपभाड़ेदार का नाम बतलाया है और यह भी लेख किया है कि परिसर में मूल स्वरूप में प्रतिवादी को टायपिंग दुकान चलाने के

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लिये किराये पर दिया गया था । टायपिंग का कार्य बंद हो गया है और दुकान में उपकिरायेदार द्वारा किताब व स्टेशनरी का कार्य किया जा रहा है । दुकान में जो संस्थान् व्यवसाय कर रही है, वह संस्थान भी अलग नाम से है । प्रतिवादी ने यहतर्क दिया है कि संशोधन द्वारा बाद में अभिवचन जोड़े गये हैं । जब संशोधन एक बार स्वीकार कर लिया जाता है, तो वह संशोधन वादपत्र के दिनांक की स्थिति की परिस्थितियों के संबंध में ही माना जाता है । संशोधन द्वारा जोड़े गये अभिवचन को केवल इस आधार पर अस्वीकार किया नहीं जा सकता है किऐसा संशोधन देरी से किया गया है ।

25. राममनोहर {वा.सा.–1} ने पैरा–11 में कहा है कि सन् 80 के बाद कभी भी वहॉ टायपिंग की दुकान नहीं खुली । प्रतिवादी ने दुकान के सामने का हिस्सा मिठाई की दुकान खोलने के लिये मोती हलवाई को दे दिया था । वह त्यौहारों में 8–10 दिन तक रहकर दुकान लगाता था । इसके बाद सन् 88 में किरायेशुदा परिसर में अग्रवाल बुक सेलर्स एवं स्टेशनर्स के नाम से नई दुकान खोली गई, जिसका प्रोप्राईटर मनोज अग्रवाल था । इसका समर्थन आशनदास {वा.सा.–2}, मूलचंद्र {वा.सा.–3} ने अपने कथनों में किया है ।

26. धरमपाल गजभिये {वा.सा.–5} अपने कथन में प्रदर्श पी–51 का दस्तावेज प्रमाणित करते हुये कहा है कि अग्रवाल बुक सेलर्स एंड स्टेशनरी मानव मंदिर चौक, राजनांदगांव के नाम पर दुकान दिनांक 29.12.88 को म.प्र.दुकान एवं स्थापना अधिनियम के अंतर्गत पंजीकृत थी, जिसका मालिक मनोज अग्रवाल था । प्रतिवादी रामप्रसाद ने मोती हलवाई को दिये जाने का अपने कथनों में स्पष्ट रूप से इंकार किया है, परन्तु अपने कथनों में यह स्पष्ट स्वीकार किया है कि सन 80 के बाद टायपिंग की दकान बंद हो गई है और अग्रवाल बुक सेलर्स एंड स्टेशनरी के नाम से दुकान चल रही है । सन 88–89 में दुकान का लायसेंस मनोज के नाम से लिया जाना भी इसने स्वीकार किया है ।

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27. प्रतिवादी के साक्षी भानुप्रताप {प्र.सा.–3} और शंभूनाथ चौबे {प्र.सा.–4} ने मोती हलवाई को सामने का स्थान दिये जाने के संबंध में जानकारी न होना कहा है, परन्तु इन दोनों साक्षियों ने स्पष्ट रूप से इंकार भी नहीं किया है, इसलिये प्रतिवादी साक्षी के अपेक्षा वादी साक्षी के कथन ही अधिक विश्वसनीय होते हैं ।

28. प्रतिवादी ने न्यायदृष्टांत 1980 भाग–1 म.प्र. वीकली नोट, शार्ट नोट–40, प्रस्तुत किया है । परन्तु इन न्यायदृष्टांत उपरोक्त आधारों के कारण इस प्रकरण में लागू नहीं होता है । वादी द्वारा प्रस्तुत न्यायदृष्टांत 1992 जब्लपुर लॉ जनर्रल 728 एवं 1997 भाग–2, जबलपुर लॉ जनर्रल पेज–127 एवं न्यायदृष्टांत 1998 भाग–2 म.प्र.वीकली नोट पेज–1 उच्चतम न्यायालय प्रस्तुत किये हैं । इन न्यायदृष्टांतों में यही कहा गया है कि "उपभोड़ेदारी को सीधी साक्ष्य द्वारा प्रमाणित करना कठिन रहता है । यदिपरिसर किसी तीसरे व्यक्ति के कब्जे में है और वह उसका उपभोग कर रहा है, तो उप–भाड़ेदार माना जा सकता है ।" न्यायदृष्टांत में यह भी कहा गया है कि "यदि उप–भाड़ेदार द्वारा परिसर को बाद में खाली भी कर दिया जाये, तब उप–भाड़ेदारी के आधार पर निष्कासन् का आदेश दिया जा सकता है ।"

29. रामप्रसाद {प्र.सा.–1} ने अपने कथनों में यह स्वीकार किया है कि विवादित दुकान में पहले टायपिंग की दुकान थी और फिर टायपिंग का व्यवसाय बंद करके अग्रवाल बुक एवं स्टेशनरी का व्यवसाय किया, जिसमें मनोज भी बैठता था और मनोज के नाम से लायसेंस भी था । अग्रवाल बुक्स एवं स्टेशनरी की दुकान दूसरे स्थान पर चली गई है, क्योंकि मेरे लड़के मनोज को एक दुकान और करनी थी । रामप्रसाद {प्र.सा.–1} ने यह भी कहा है कि वह दुकान पर बैठता था और उन लोग शामिल शरीक रहते हैं, परन्तु भानुप्रताप {प्र.सा.–3} ने पैरा–5 में कहा है कि जब मैं दुकान में काम करता था और टायपिंग सीखता था, तब उस दुकान

का संचालन रामप्रसाद करते थे । पैरा–12 में इसने कहा है कि वर्तमान में दुकान बुक सेलर्स है । यह दुकान सन् 81 से देख रहा हूँ । अब केवल टायपिंग काम नहीं देखता हूँ । प्रतिवादी साक्षियों के कथन से ही यह स्पष्ट हो जाता है कि प्रतिवादी टायपिंग की दुकान से अपना व्यवसाय परिवर्तित कर दिया है और दुकान पर स्वयं न बैठकर अपने लड़के को बैठालने लगे थे और अब लड़के ने भी विवादित परिसर को छोड़कर उसी नाम से अन्य स्थान पर दुकान कर ली है । भले ही प्रतिवादी ने अपने लड़के को दुकान दी हो, परन्तु यह स्पष्ट है कि उसने जिस कार्य के लिये परिसर किराये पर लिया था, उससे भिन्न व्यवसाय अपने लड़के से दुकान पर कराया और स्वयं ने दुकान पर व्यवसाय नहीं किया, बल्कि वह प्रिंटिंग प्रेस गंज लाईन पर करता रहा और मनोज ने भी अलग दुकान खोल ली है और अब दुकान में प्रतिवादी का दामाद बैठने लगा है । यह तथ्य साक्ष्य से पूर्ण रूप से प्रमाणित है । इसप्रकार के कार्य को उपभाड़े पर दुकान दिया जाना माना जा सकता है । जैसा कि न्यायदृष्टांत 1998 एम.पी.ए.सी.जे.– पेज–151 में कहा गया है ।

30. प्रतिवादी ने न्यायदृष्टांत ए.आई.आर.–1977 देहली–117 प्रस्तुत किया है और इस न्यायदृष्टांत के आधार पर यह तर्क किया है कि पिता ने पुत्र को दुकान दे दी भी है, तो उपभाड़ेदार नहीं माना जा सकता है, परन्तु इस न्यायदृष्टांत में किरायेदार ने अपने नाम से दुकान ली थी और कम्पनी बनायी थी और कम्पनी का स्वयं ही प्रबंध मैनेजर था और पूर्ण नियंत्रण भी था । पुत्र और पत्नी केवलशेयर धारक थे । जबकि वर्तमान प्रकरण में प्रतिवादी ने विवादित परिसर का संचालन पूर्ण रूप से छोड़कर नये नाम से नई दुकान का मनोज अग्रवाल ही देखता था और वही संचालन करता था, इसलिये उक्त न्यायदृष्टांत का लाभ प्रतिवादी को नहीं मिलता है ।

31. इसी वादप्रश्न में यह भी स्पष्ट करना उचित है कि यदि दोनों पक्षों के द्वारा किसी तथ्य पर अपनी साक्ष्य प्रस्तुत

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की हो और प्रतिपरीक्षण किया हो, तो ऐसा साक्ष्य के आधार पर निष्कर्ष दिया जा सकता है तब यह आवश्यक नहीं रहता है, कि इस तथ्य पर अलग से वादप्रश्न निर्मित किया जाये । चूँकि यह वादप्रश्न उप–भाड़ेदार का ही है और वादप्रश्न पर मोती को उपभाड़े पर देने का बना है, तब इसी वादप्रश्न पर मनोज अग्रवाल की उपभाड़ेदारी पर निष्कर्ष दिया जाता है । इस संबंध में न्यायदृष्टांत 1993 जबलपुर लॉ जनर्रल पेज–654 अवलोकनीय है ।

32. अतः उपरोक्त आधारों के कारण इस वादप्रश्न का निष्कर्ष "हॉ" में दिया जाता है ।"

(14) Ex.P-48, which is a publication in daily Sabera Sanket dated 20-06-1998, is as under:

"दुकान स्थानांतरण

अग्रवाल बुक सेलर्स एण्ड स्टेशनर्स

की दुकान जो मानव मंदिर चौक में थी, अब बी.एस. काम्पलेक्स अम्बर एजेन्सी के अन्दर शॉप नं. 7 मानव मंदिर चौक में चली गई है.

प्रोपाइटर

मनोज अग्रवाल"

The above publication clearly shows that the appellant/defendant had parted with possession of the suit shop in favour of Manoj Agrawal.

(15) Testimony of the respondent/plaintiff that the appellant/defendant had sub-let the chabutara and some portion of the land in front of the suit shop to Moti Halwai is wholly unrebutted. Asandas, P.W.-2 has also deposed that Moti Halwai was conducting a sweet shop at the platform during the period when the appellant/defendant had closed the

typing shop. The appellant/defendant has also admitted in cross-examination in paragraphs 25 and 26 that his typing shop did not exist in the suit accommodation since 1980 and has further admitted in para 33 of his testimony that Rajesh Kumar, his son-in-law had also conducted business for some time in the suit shop. The appellant/defendant also admitted in para 31 that the licence of the shop "Agrawal Book Sellers and Stationers" was taken in the name of his son Manoj Agrawal. This is further substantiated by the testimony of Dharmpal Gajbhiye, P.W.-5, who has proved the entry in the register maintained under the M.P. Shops and Establishments Act, 1958 showing the registration of the Agrawal Book Sellers and Stationers, Manav Mandir Chowk, Rajnandgaon in the name of Manoj Agrawal.

(16) Upon a minute scrutiny of the evidence adduced by the parties and the findings recorded by the trial Court in paragraphs 26 to 31, in the light of the circumstances mentioned above, I am of the considered opinion that the lower appellate Court has rightly expressed agreement with the finding recorded by the trial Court on the ground of eviction under Section 12(1)(b) of the Act, 1961. The trial Court had, on a proper consideration of the entire evidence and the subsequent conduct of the parties, recorded a finding wholly consistent with law that the ground for eviction under Section 12(1)(b) of the Act, 1961 was established. Therefore, the lower appellate Court was not required to enter upon a re-appraisal of the evidence and general approval of the reasons assigned by the trial Court in support of its conclusion was sufficient. In ***Girijanandini Devi and others*** **vs.** ***Bijendra Narain Choudhary*** (supra), the Apex Court held as under:

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> "(12) ..... It is not the duty of the appellate Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."

(17) In this view of the matter, the lower appellate Court did not commit any error in agreeing generally with the reasons given and the finding recorded by the trial Court for coming to a conclusion that the ground for eviction under Section 12(1)(b) of the Act, 1961 was established. Since the trial Court had, on proper appreciation of the entire evidence, recorded the above finding, the expression of general agreement by the lower appellate Court with the reasons given by the trial Court is not contrary to law. The first substantial question of law is accordingly answered in negative against the appellant/defendant and in favour of the respondent/plaintiff.

(18) A word of caution needs to be made here. The lower appellate Court, in a situation like this, should first deal with the grounds raised by the appellant/defendant in appeal as also during arguments while challenging the finding of the trial Court on an issue. The arguments advanced on behalf of the appellant should be dealt with one by one. Upon negativing the grounds urged by the appellant for arriving at a different conclusion, the lower appellate Court would have been justified in making an expression of general agreement with the findings recorded by the trial Court. Judgment of the lower appellate

Court should reveal application of mind to the grounds of challenge to the finding recorded by the trial Court.

(19) So far as the second substantial question of law is concerned, it is pertinent to note that the respondent/plaintiff had admitted in para 27 of his testimony that he had not sent any information to the appellant/defendant about having received the suit accommodation in a partition. Since the appellant/defendant was admittedly inducted as a tenant in the suit accommodation by Chaituram, pleadings in para 2 of the written statement, quoted above, are to be viewed in that context. In ***Sheela and others*** **vs.** ***Firm Prahlad Rai Prem Prakash***, **AIR 2002 SC 1264**, the Apex Court has laid down the principle, under which denial of landlord's title or disclaimer of the tenancy by the tenant may constitute an act adversely and substantially effecting the interest of the landlord and thereby providing a ground for eviction of the tenant under Section 12(1)(c) of the Act, 1961. In para 17, the Apex Court held as under:

> **"17.** In our opinion, denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and substantially the interest of the landlord and hence is a ground for eviction of tenant within the meaning of Cl. (c) of sub-section (1) of S. 12 of M.P. Accommodation Control Act, 1961. To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona fide calling upon the landlord to

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> prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by Rent Control Law but without disowning his character of possession over the tenancy premises as tenant cannot be said to have denied the title of landlord or disclaimed the tenancy. Such an act of the tenant does not attract applicability of S. 12 (1)(c) abovesaid. It is the intention of the tenant, as culled out from the nature of the plea raised by him, which is determinative of its vulnerability."

(20) In the light of the judgment of the Apex Court and the admission made by the respondent/plaintiff, the pleadings of the appellant/defendant in para 2 have to be construed in the above perspective to determine whether the tenant had disowned the character and nature of possession over the suit premises as tenant or not. The appellant/defendant was inducted as a tenant in the suit accommodation by Chaituram, father of the respondent/plaintiff and no intimation was given to the tenant about the suit accommodation having fallen to the share of the respondent/plaintiff in a partition. The intention of the tenant in raising the pleadings in para 2 of the written statement have to be culled out as raising purely a question of necessary parties and not as an act, which is likely to effect adversely or substantially the interest of the landlord or as a disclaimer of tenancy. The second substantial question of law is accordingly answered that the pleadings of the appellant/defendant in para 2 of the written statement did not constitute denial of title of the landlord so as to provide a ground under Section 12(1)(c) of the Act, 1961 to the respondent/plaintiff for eviction

of the appellant/defendant. The judgment and decree under Section 12(1)(c) of the Act, 1961 passed by the trial Court and affirmed by the lower appellate Court are liable to be set aside.

(21) In the result, the appeal is partly allowed. The respondent/plaintiff, having failed to establish ground for eviction of the appellant/defendant under Section 12(1)(c) of the Act, 1961, is not entitled to evict the tenant on that count. The impugned judgment and decree passed by the lower appellate Court as also the judgment and decree passed by the trial Court, so far as they relate to granting eviction of the tenant under Section 12(1)(c) of the Act, 1961 ~~is concerned~~, are set aside. However, the impugned judgment and decree insofar as it relates to granting eviction of the appellant/defendant under Section 12(1)(b) of the Act, 1961, is affirmed. In the facts and circumstances of the case, there shall be no order as to costs.

A decree shall be drawn accordingly.

Sd/-
Dilip Raosaheb Deshmukh
Judge

30 -08-2007

Gopal